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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/685,366      | 10/10/2000  | Scott E. Peters      | 787446-2001.1       | 3990             |

20999 7590 03/14/2002

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NEW YORK, NY 10151

EXAMINER

DAVIS, RUTH A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1651

DATE MAILED: 03/14/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/685,366

Applicant(s)

PETERS ET AL.

Examiner

Ruth A. Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 14 is/are rejected.
- 7) ☒ Claim(s) 3,5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant's amendment has been received and entered into the case. Claims 2 and 7 – 13 have been cancelled. Claims 1, 3 – 6 and 14 are pending and have been considered on the merits. All arguments have been fully considered.

#### ***Claim Objections***

1. Claims 1 and 14 are objected to because of the following informalities: In line 5, "for" should be replaced with "from". Appropriate correction is required.
2. Claims 3, 5 and 6 are objected to because they depend on a rejected claim.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peignier et al. (US 7938983) in view of Gellenbeck (US 5827539) and Mae et al. (US 6184255).

Applicant claims a stable particulate suspension consisting essentially of a nutrient selected from an isoflavone, lycopene, lutein, coenzyme Q<sub>n</sub> wherein n is 1 – 12, or mixtures thereof; a stabilizer selected from lecithin, a hydrocolloid selected from xantan gum, pectin, gelatin, guar gum, carrageenan, methylcellulose, hydroxypropyl cellulose, gum arabic or mixtures thereof, a surfactant or DOWICIL; and an aqueous solvent.

Peignier teaches a suspension of solid particulates in an aqueous media stabilized by xanthan gum (abstract). Specifically, the composition maintains water insoluble solid particles in suspension in aqueous media (col.1 line 14-16) without allowing the particles to be deposited via sedimentation (col.1 line 60-65). Peignier teaches water insoluble particles include pigments (col.2 line20-25).

Peignier does not specifically teach the suspension wherein the pigment, or water insoluble particulate, is isoflavone, lycopene, lutein coenzyme Q<sub>n</sub>, or mixtures thereof. However, at the time of the claimed invention, it was well known in the art that isoflavone, lycopene, lutein and coenzyme Q<sub>n</sub> are water insoluble particulates. It was also known that lycopene and lutein are water insoluble pigments. In support, Gellenbeck teaches lutein and lycopene are water insoluble pigments (col.1 line8-16) and Mae teaches coenzyme Q<sub>10</sub> is a

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water insoluble substance (col.1 line 45-50). At the time of the claimed invention, it would have been obvious to one of ordinary skill in the art to use isoflavone, lycopene, lutein or coenzymes in the suspension of Peignier because they were each well known water insoluble particulates, as evidenced by the cited references. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated to include any of the known water insoluble particulates in the suspension of Peignier with a reasonable expectation for successfully obtaining a stabilized, particulate suspension.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

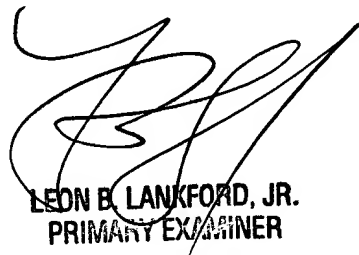
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 703-308-6310. The examiner can normally be reached on M-H (7:00-4:30); altn. F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Ruth A. Davis; rad  
March 13, 2002



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER